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2 changed. People sell, people move.

3 This is a place that we put a lot of
4 effort into. After the fire, Frank said to me,
5 Anything that is not going to last after 20
6 years we will replace, because this is going to
7 be our home for the rest of our lives. And we
8 did that. We had all new countertops put in, a
9 new double oven, and -- sorry, this is very
10 hard (weeping).

11 As far as losing our own house, when
12 it was first presented to us, it was that we
13 could either throw our son out or we could sell
14 and move. Being a mother, and, you know, I
15 recognize Alex is not perfect. We are very
16 upset over the, what do you call it, BB gun,
17 and we have talked to him about it. He didn't
18 shoot it. Everybody said he didn't shoot it
19 including him. He'll tell you that. He
20 shouldn't have had it. We have talked to him
21 about that. Fortunately, he doesn't have it
22 anymore.

23 And we talked to him about never
24 letting strangers in the apartment, we know
25 that at times when we are not there Simon will

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come up and they play video games because I will come home and he will be there. And Darden will sometimes be there and they are playing video games. That is sort of an occupation that takes up a lot of his time. When he is not at school, he is in his room playing video games for an inordinate amount of time.

But I share with Frank the feeling that he is not going to be a danger to the building. It was very poor judgment. I believe he's learned from this. And the thought of losing our home after 20 years, I don't know where to go. As Steve said, to get into another co-op under these circumstances would be very difficult.

It's financially very onerous at a point in time in our lives when we are trying to get ready for retirement. I have gone back, Lord knows, you sort of get downsized, you keep moving on. I am in my third job in ten years after having the first one for 30 years. But it will be very financially difficult for us, and emotionally.

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2 You are all my neighbors. I see you
3 on the elevator. We chat. It's always been
4 friendly, and this is just devastating. And I
5 hope it won't happen. I can't say any more.

6 MR. SOMERSTEIN: Before Alex talks, I
7 would like to say some preliminary remarks
8 about what you are going to hear from Alex.

9 What you heard from Simon on this
10 transcript and what Alex says is very
11 consistent. I think it is beyond argument that
12 Alex didn't fire these shots. I don't think
13 anybody can reach that conclusion from anything
14 we have heard so far. And Simon, who was
15 there, says Alex didn't shoot that gun.

16 There are going to be some
17 differences. You know, eyewitnesses frequently
18 vary in how they view things because they view
19 things from different vantage points and from
20 different circumstances. It's possible that
21 Simon was able to see some things that Alex
22 didn't see.

23 Alex will explain to you how they
24 were playing video games and how involved each
25 one of them was. You will hear that Alex was

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2 concentrating more on the video games than
3 Simon was, and that Alex was playing the video
4 game continuously while the other two boys were
5 switching in and out and there were times when
6 they were not playing, and were walking around
7 the apartment and doing certain things and able
8 to see certain things that Alex didn't see and
9 didn't hear.

10 You should understand from the time
11 line how this happened; that some of the things
12 some of the people across the street said they
13 saw are just not right, it's impossible. From
14 everything we have heard, these shootings took
15 place around 3 or 3:30 in the afternoon, and
16 Eric leaves around 4, Simon comes up around 5
17 and tells him that something is wrong on the
18 street, and the boys are picked up by the
19 police around 6 o'clock. I think the people
20 across the street talk about seeing people in
21 the window way after the shootings actually
22 took place. Were they wearing masks? This
23 whole story about the masks is entirely
24 perplexing. The police, I guess because of
25 what they were told by the people across the

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2 street about masks, went into the apartment and
3 actually searched for masks and they didn't
4 find any. There were no masks there. And
5 there is no history that Alex ever wore a mask
6 even to a Halloween party or ever had a mask.

7 I also want to emphasize, so there is
8 no confusion, as to this belt with those
9 bullets, those were not real bullets. I don't
10 know if they were empty cartridges or they were
11 fashioned to look like bullets, but that wasn't
12 a bandolier of real bullets that the kids were
13 wearing. These kids weren't parading around
14 like they were some kind of hooded masked
15 terrorists or anything like that. This was an
16 unfortunate, stupid incident with a BB gun. It
17 shouldn't have happened. But Alex didn't do
18 it.

19 I will save further comment maybe for
20 a closing statement, but I think it would be
21 good now if you hear from Alex.

22 MR. ALEX HARVEY: On the main
23 question, around 3 o'clock I called Simon -- or
24 Simon called me, said if I wanted to go to the
25 store to buy paint cartridges. So I went with

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2 him to the store. We got back and he hung out
3 in my room for maybe half an hour, until 2:50.
4 And he went back downstairs. And around 3
5 o'clock Simon called me and asked if he could
6 come upstairs, and I said yes, sure. Then I
7 called Taylor, and Taylor asked if he could
8 invite another person, Eric, who I had never
9 met, over. And since that's how I met
10 Taylor -- I met Taylor through Simon, he seemed
11 pretty cool -- so I figured whatever, he must
12 be a good guy if he is one of my friends'
13 friends. So I invited him over, and that must
14 have been around 3 o'clock.

15 So I think Eric arrived, they arrived
16 maybe 3:15, and we were playing video games on
17 the television, and there was Winner Keeps It,
18 two people can play at a time. And so Simon
19 and I were sitting side by side in front of the
20 TV, and Taylor was sitting in the middle seat
21 behind us, and Eric was sitting on my bed since
22 we didn't have enough seats.

23 Sometime during the course of the
24 game, I saw Eric take the box which held my
25 pellet gun from the shelf after Taylor told him

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2 that this kid has like a real cool gun, and I
3 turned around and I told him to put it down and
4 not to use it, it's not a toy, I don't want my
5 house being wrecked.

6 And so I see him put it down, so I
7 just continued playing. Simon and I are
8 switching off as the controller. And I am
9 winning, so I keep the first controller, and I
10 have, you know, the volume is up loud and the
11 pellet gun makes a very slight sound, like a
12 rush of air. And Alex had an earpiece in, that
13 attaches to the microphone from X-Box Live, and
14 when there are 16 players screaming in your
15 ear, you can imagine how you probably couldn't
16 hear anything going on.

17 MR. SOMERSTEIN: Explain 16 other
18 players. There are only three people there.
19 Explain what are you talking about.

20 MR. ALEX HARVEY: X-Box Live you can
21 play multiplayer games with other players
22 on-line over the Internet, and there can be a
23 whole range of people who play from Europe,
24 Asia, Africa, and they will all be able to talk
25 to you through your headset.

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2 And I am guessing with all this
3 volume around I didn't notice. I thought I saw
4 Taylor and Eric leave through my bedroom door
5 and come back. But Simon says that Eric was
6 using my bedroom window, and I guess that Eric
7 might have said to me, something like, "I got
8 him" or something like that, but I never heard
9 anything like that. I was fixed on the
10 television.

11 I don't know why Simon would say he
12 doesn't care it is not his problem. I would
13 care if people got shot. I would throw him out
14 of the building before I went down and told
15 somebody. I don't take lightly to people
16 getting hurt; it's not a very nice thing. I
17 wouldn't want to walk down the street and have
18 it happen to me.

19 But, anyway, around 4 o'clock, Eric
20 said that he suddenly had to leave. He seemed
21 somewhat in a rush, but we didn't notice
22 anything, so he left down the front. And at
23 around 5 o'clock Doda and his father came
24 upstairs and said there has been an incident,
25 somebody had gotten shot like with a pellet or

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2 something outside -- that's his words -- and
3 Simon should go downstairs right now.

4 Maybe around 5:10 or 5:15, Taylor and
5 I went to the window because we heard cop cars
6 and we were wondering what was going on. Well,
7 then, maybe I went down the back -- I went down
8 the back and through the side entrance, because
9 I didn't want to get my friends into trouble.
10 But he had already left, so I figured that
11 maybe the blame would be placed on Simon or
12 something like that, or Taylor. So --

13 MR. SOMERSTEIN: Or you?

14 MR. ALEX HARVEY: Yes, or me, because
15 it was my apartment.

16 And, you know, bringing the gun to
17 the apartment was a stupid thing. In
18 Massachusetts it's legal, but I didn't know
19 that I couldn't bring it to New York, and I
20 never would have done that. And I never meant
21 to hurt anybody. I wouldn't do that on purpose
22 ever.

23 MR. SOMERSTEIN: Is that it?

24 MR. ALEX HARVEY: I am ready to
25 answer questions.

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2 MR. SOMERSTEIN: Can I ask one
3 question? I am a little reluctant to have him
4 answer questions, since the format of the
5 meeting has been that he wasn't allowed to
6 question anybody. We have had statements to us
7 that we can't challenge, question, or
8 cross-examine. If that is the procedure, we
9 should abide by it. We have made our
10 statements, and I think we should abide by that
11 procedure.

12 MR. COLBERT: Why don't you hear the
13 question and then decide whether or not to
14 answer it?

15 MR. SOMERSTEIN: I don't want to be
16 selective about it. I think we should agree on
17 procedure. That is fair to both sides. I
18 don't want to be evasive.

19 MR. LEPPER: I understand that, but I
20 think that definitely in an adversarial
21 proceeding --

22 MR. SOMERSTEIN: But it is not.

23 MR. LEPPER: -- and this is not;
24 This is the Board trying to figure out, as best
25 they can, what happened, and, you are right, in

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2 that you don't have all the rules and
3 regulations one might have in a courtroom or an
4 arbitration.

5 But what I want to ask of Alex, and I
6 will say to you, is: When did he tell his
7 father about what he just said?

8 MR. SOMERSTEIN: Let me just stop you
9 there. The reason I don't want to start down
10 the road of asking some questions is because I
11 don't want to start being selective about which
12 questions he answers, which questions he
13 doesn't answer, being reasonable to answer some
14 questions. Maybe some answers may be taken as
15 an admission, other questions may be
16 appropriate to answer.

17 MR. COLBERT: If you don't want him
18 to answer questions, that is fine. That is
19 your position. You made it clear.

20 MR. SOMERSTEIN: Let me finish. My
21 position is that I think it is unfair. I don't
22 want to leave the Board, however, with the
23 impression that we are somehow trying to hide
24 facts from them. We are not. If a Board
25 member has a question, we will answer that, but

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2 I am not going to subject him to
3 cross-examination by a lawyer.

4 MR. FRANK HARVEY: I can answer that
5 question. I will answer that question.

6 MR. SOMERSTEIN: No. I don't want
7 the question answered until we agree on a
8 procedure that is fair. You are an excellent
9 cross-examiner, and I saw the way you
10 cross-examined Simon. I don't want you to
11 cross-examine him.

12 MR. COLBERT: Let me stop you there.
13 Let me ask you a question: Do you intend on
14 addressing the other issues, the other conduct
15 that was brought out?

16 MR. SOMERSTEIN: We've addressed it
17 in this letter pretty much.

18 MR. COLBERT: So you are referring to
19 the letter so they can read that into the
20 record.

21 MR. SOMERSTEIN: Yes.

22 MR. COLBERT: I just want to be fair
23 and open about that. Is there anything else
24 you have to present today?

25 MR. HARVEY: We are done, we are

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2 done.

3 MR. SOMERSTEIN: Frank, don't be the
4 lawyer. I am the lawyer.

5 MR. COLBERT: Are you done?

6 MR. SOMERSTEIN: I would say, unless
7 a Board member has a question they want to ask.

8 MR. LEPPER: I will talk to the Board
9 for five minutes. We need five or ten minutes.

10 MR. SOMERSTEIN: Fine.

11 (A recess was taken.)

12 MR. SOMERSTEIN: I would ask, on the
13 record, my concern as to the fairness of
14 procedure. I would think it is not fair, and I
15 would object if I had a place to object to, if
16 the Board is going to be prompted by the
17 lawyers as to what questions to ask. I think
18 the questions should be genuine questions of
19 the Board members, not cross-examination by
20 agency, and if the Board members have questions
21 we will answer them, but cross-examination is
22 wrong.

23 (A recess was taken.)

24 MR. COLBERT: Just going back on the
25 record, the Board compiled some questions, and

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2 Mr. Lowrey is going to present them to you on
3 behalf of the Board.

4 MR. LOWREY: We have four questions,
5 and the first is to the two of you: Did you
6 know that Alex had weapons? Did you know that
7 he had a knife?

8 MR. FRANK HARVEY: The knife, yes.
9 He got that when he was fly-fishing. We knew
10 he had that, it is always in his room. And he
11 has a nervous habit of clicking it when he
12 watches TV. So we can always tell when he is
13 watching TV, because we hear the clicking
14 sound. But, as far as I know, it has never
15 left the room. Alex is a very accomplished
16 fly-fisherman. He got this knife because you
17 could put it in your backpack, you could put it
18 i your pocket and fold it up, and when he did
19 the trek across Wyoming, we knew he had the
20 knife. He was told never to leave it out. It
21 stayed in his room.

22 We didn't know he had the BB gun. We
23 would have been very upset if we knew he had
24 the BB gun.

25 MS. WILHELM: And we knew he had the

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2 paint ball stuff. Because one of his friends'
3 father who is a doctor took his friend and him
4 for paint ball when he was quite young. And
5 then one of his friends from Portsmouth Abbey
6 was heavy into it. And in fact we took them
7 down to --

8 MR. FRANK HARVEY: Allentown.

9 MS. WILHELM: -- Allentown,
10 Pennsylvania.

11 MR. FRANK HARVEY: Spent the night in
12 Allentown, Pennsylvania. What you do for your
13 children! (Laughter)

14 MS. WILHELM: And Frank is the one
15 who actually hung it up on a strap.

16 MR. LOWREY: OK. Does he have any
17 other weapons?

18 MR. FRANK HARVEY: No, not that I
19 know of. Alex?

20 MR. ALEX HARVEY: No.

21 MR. LOWREY: The second question --
22 and these are compiled from the Board, I am the
23 spokesman for the Board: What schools has he
24 attended?

25 MR. FRANK HARVEY: The schools he

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2 attended?

3 MR. LOWERY: Yes.

4 MR. FRANK HARVEY: He'd gone to
5 Collegiate for a couple of years, and then went
6 to West End Day School because he was having
7 discipline problems. Nothing of moral
8 turpitude; just antsy around the classroom and
9 stuff like that. And he went to West End Day
10 School which has five pupils for each teacher,
11 and they really tighten you up a lot, which he
12 did. And then we sent him to Browning for a
13 while. He hated it. They didn't like him
14 either. So then he went to the Blessed
15 Sacrament, we went to the Catholics. We went
16 there because the Catholics -- Browning was one
17 of these very loosey-goosey things. Alex used
18 to leave the classroom to do his work in the
19 hallway because it was so '60s laid-back kind
20 of atmosphere, it just didn't work for him. So
21 we sent him to Blessed Sacrament where we came
22 across a woman who under normal conditions
23 would have been a nun.

24 MR. SOMERSTEIN: Can you specify the
25 grades for each of these?

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2 MR. FRANK HARVEY: For kindergarten
3 he went to Montessori School, which let his
4 personality expand. We have been trying
5 constantly to push it back into the tube. So
6 he went to Collegiate for First and Second
7 Grade, West End Day. And then --

8 MR. COLBERT: For what years?

9 MR. FRANK HARVEY: -- third and
10 Fourth.

11 MR. LEPPER: And then Browning?

12 MR. FRANK HARVEY: Browning was
13 Fifth. Sixth and Seventh we went with the
14 Catholics, with a very wonderful woman, she was
15 very nice. But the problem with that was --

16 MR. LEPPER: Blessed Sacrament?

17 MR. FRANK HARVEY: At Blessed
18 Sacrament, I'm sorry, Blessed Sacrament.

19 MR. LEPPER: And that was Sixth and
20 Seventh?

21 MR. FRANK HARVEY: That was Sixth and
22 Seventh.

23 MS. WILHELM: We decided that he
24 wasn't getting enough education at the Catholic
25 school, and I knew that when he gets to high

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2 school he'd actually have to do homework.

3 Passed the time, he got home, I mean he was
4 finished with his homework by the time he got
5 home from school at Blessed Sacrament. So we
6 sent him to Rector.

7 MR. FRANK HARVEY: It is in Pomfret,
8 Connecticut. It is an Episcopal school that's
9 called a junior prep. Basically, Seventh,
10 Eighth, and Ninth grades.

11 MR. LEPPER: When did he go there?

12 MR. FRANK HARVEY: Eighth and Ninth
13 grades.

14 MS. WILHELM: He graduated from there
15 and then went to Portsmouth Abbey.

16 MR. FRANK HARVEY: He went two years
17 at Portsmouth Abbey.

18 MS. WILHELM: And he is at UMass now.

19 MR. FRANK HARVEY: Portsmouth Abbey
20 is at Portsmouth, Rhode Island.

21 MR. LEPPER: Where is Rector?

22 MR. FRANK HARVEY: Rector is in
23 Pomfret, Connecticut, which is in the furthest
24 corner of Connecticut.

25 MR. LEPPER: Actually, north?

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2 MR. FRANK HARVEY: North and very
3 east. It is about forty minutes from Boston,
4 about twenty minutes from Worcester, and about
5 half an hour from Providence. And, of course,
6 with Portsmouth Abbey, we spent five years
7 going to Providence a lot.

8 Q. So that is Blessed Sacrament here?

9 A. 70th Street. In a way, both Jean and
10 I had gone to parochial schools. We liked the
11 nuns. So I had a very positive experience with
12 nuns, very dedicated, and the teachers he had
13 there were very good. That's it.

14 MR. LEPPER: Montessori was
15 kindergarten?

16 MR. FRANK HARVEY: Actually, let me
17 go through the whole thing. In Third and
18 Fourth Grade he was at the Collegiate Play
19 School, I am sorry, when he was 3 and 4 years
20 old he went to the Collegiate Play School. 5
21 and 6 he went to the Montessori School. 7 and
22 8 he went to Collegiate, and the rest is as I
23 said.

24 MR. LOWREY: Thank you. The other
25 two questions are for Alex, so I will address

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2 them to you, and then you can advise Alex.

3 MR. SOMERSTEIN: You can address them
4 directly to Alex.

5 MR. LOWREY: That's fine. The Board
6 is trying to put together the facts on the
7 shooting incident and focus on that. One of
8 the things that if Eric shot out the front and
9 then left, allegedly, according to the stories
10 we have heard, but then there was also a
11 shooting at the back, allegedly. Do you know
12 anything about the shooting out the back or
13 what happened or how that could have happened?

14 MR. ALEX HARVEY: I don't know what
15 happened, but, like I said, he left my room at
16 the time, and --

17 MR. LOWERY: With the gun?

18 MR. ALEX HARVEY: And Simon said on
19 his tape he saw Taylor throwing out of the back
20 window while I was still in my room playing
21 video games, so I think Taylor and Alex's
22 friend Eric would do --

23 MR. SOMERSTEIN: But the question
24 was, did you see him leave the room with the
25 gun?

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2 MR. ALEX HARVEY: No, I didn't see
3 him leave the room with the gun.

4 MR. LOWREY: And the final question
5 is: Drew had mentioned at one point that you
6 got a box which you opened and there were fuses
7 in it. What were those for? Why did you order
8 those? What was that all about?

9 MR. ALEX HARVEY: When we play video
10 games, I was making smoke bombs. They are not
11 incendiary devices, they don't produce fire or
12 heat; they just smoke. They are not dangerous,
13 they are not like the ones in the basement.

14 MR. LOWREY: And you used those in
15 the paint ball games?

16 MR. ALEX HARVEY: Yes. Like I said,
17 Simon and I haven't been to a paint ball arena
18 in however long, since we went the first time
19 in Queens. We really didn't go back. I don't
20 know why he said he was going to go back there
21 but he didn't.

22 MR. LOWERY: I think those were the
23 questions we had. Thank you very much.

24 MR. FRANK HARVEY: So we are done?

25 MR. COLBERT: Do you have anything

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2 else you would like to add?

3 MR. SOMERSTEIN: Excuse me, Frank. I
4 ordinarily have to, like at a trial, make a
5 closing argument for hours, but I won't do that
6 here. I really don't think we have much to add
7 to the facts. I think you have the facts as
8 best we could present them under these
9 circumstances, and I just ask you to be fair.
10 That's it.

11 MR. COLBERT: Thank you very much.

12 MR. LOWREY: Thank you.

13 MR. SOMERSTEIN: Let me add: When is
14 the vote going to be taken and how are we going
15 to be notified? What is the procedure going to
16 be from here?

17 MR. COLBERT: The Board is going to
18 deliberate and we will give you a call tomorrow
19 what they decided, and they will decide what
20 they want to do.

21 MR. SOMERSTEIN: So you will call me?

22 MR. COLBERT: We will contact you
23 tomorrow. I will give you a call tomorrow.

24 MR. SOMERSTEIN: I do have a lawyerly
25 objection I want to put on the record. Before

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2 these questions were asked, there was
3 deliberation of the Board and I noticed the
4 court reporter was standing out in the hallway.
5 I think all the proceedings in this matter,
6 deliberations and votes, should be on the
7 record, and I would ask that that be the case.
8 I think we need a record here that is clean and
9 clear, so that there is no argument later about
10 who said what, he said, she said, they said.
11 So I would ask that everything is on the
12 record.

13 MR. COLBERT: Just so the record is
14 also clear that you were given an opportunity
15 to confer with your clients during this meeting
16 and that was off the record as well, and there
17 were many discussions that you had with your
18 clients, just so the record reflects the
19 circumstances.

20 MR. SOMERSTEIN: No, by no means do I
21 mean that attorney-client privilege should be
22 breached and have discussions between the
23 clients and lawyers on the record. That is not
24 what I am saying.

25 MR. COLBERT: I think you said what

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2 you said.

3 MR. SOMERSTEIN: What I said is that
4 deliberations should be on the record, and the
5 vote of the Board should be on the record.

6 (Mr. Somerstein, Mr. and Mrs. Harvey,
7 and Alex Harvey left the room.)

8 MR. COLBERT: For the record, the
9 Harveys and Mr. Somerstein have now left. The
10 Board is going to now deliberate as to what the
11 Board would like to do with this, whether they
12 would like to take a vote, and then the vote
13 will be announced to the Harveys as to what the
14 decision is concerning the Board's resolution
15 of this matter.

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